IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4586 of 2006
With
CIVIL APPLICATION No. 13239 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO., - Appellant(s)
Versus
JASHUBEN WD/O DEVJIBHAI KHUSHALBAHI RATHOD & 4 - Defendant(s)

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Appearance :
MR GC MAZMUDAR for Appellant(s) : 1,MR HG MAZMUDAR for Appellant(s) : 1,
MR PV NANAVATI for Defendant(s) : 1,
MR VIBHUTI NANAVATI for respondents(s) : 1 to 4
None for respondent : 5.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Appeal is admitted. Mr.Vibhuti Nanavati waives service of notice for respondents Nos.1 to 4 - original-claimants. Presence of respondent No.5 is not necessary as no order prejudicial to the said respondent is being passed. With the consent of the learned counsel for the parties, we have taken up the appeal for final hearing.

2. In this appeal under section 173 of the Motor Vehicles Act, 1988, the Oriental Insurance Company Ltd., has challenged the judgment and award dated 2nd December 2005 passed by the Motor Accident Claims Tribunal, Kheda at Nadiad in MACP No.1018 of 1994 awarding compensation of Rs.16,43,400/- with proportionate costs and interest at the rate of 12% per annum from the date of the claim petition till realization to widow, two children and widowed mother of the deceased.

3. Davjibhai Khushalbhai Rathod, aged about 35 years, employed under the Oil and Natural Gas Corporation Limited, died in a motor vehicle accident which took place on 23rd June 1994 involving a mini luxury bus in which the deceased was traveling as a passenger from Surat to Mehsana. The mini luxury bus was insured by the appellant Insurance Company.

4. The Tribunal had no difficulty in invoking the principle of *res ipsa loquitur* for holding the bus driver to be solely negligent for the accident in question. On the question of quantum of compensation, the Tribunal considered the fact that the deceased was working as Assistant Grade-I under the ONGC, Ankleshwar. As per the salary slip at Ex.35, monthly salary of the deceased was Rs.3295. The claimants, however, produced a statement dated 5th February 2003 issued by the Senior Personnel and Administrative Officer, ONGC, Anklelshwar certifying that the deceased was receiving the following salary and perks in the month of June 1994 :

1.	Basic pay	Rs.3295/-
2.	DA @ 18.5%	Rs.610/-
3.	DSCA 20% of basic	Rs.650/-
4.	HRA @ 18% of basic pay	Rs.593/-
5.	Productivity allowance	Rs.450/-
6.	Washing allowance	Rs.45/-
7.	Conveyance Allowance	Rs.375/-
8.	Child Education Allowance (for two children)	Rs.240/-
9.	Child Bus fare (for two children)	Rs.160/-
	Total:	Rs.6418/-

The Officer further certified that the deceased would have received the following salary (inclusive of basic, DA and other perks at the rates prevailing in

August 2002 at Ankleshwar Project of ONGC) had he continued in the service of ONGC on the same post:

1.	Basic pay	Rs.10693/-
2.	DA @ 35.5%	Rs.3892/-
3.	DSCA 20% of basic (Maximum Rs.3100)	Rs.2193/-
4.	HRA @ 22.5% of basic pay	Rs.2406/-
5.	Productivity allowance	Rs.500/-
6.	Tribal allowance	Rs.200/-
7.	Conveyance Allowance	Rs.740/-
8.	Child Education Allowance (for two children)	Rs.500/-
9.	Child Bus fare (for two children)	Rs.250/-
10.	Canteen Sub.	Rs.164.80
	Total:	Rs.21803.80

On the aforesaid basis, the Officer certified that the basic pay of the deceased which was Rs.3295/- on 1.7.94 would have been Rs.10,693/- on 1.1.2002, Rs.10784 as on 1.1.2005, Rs.11161 on 1.1.2006 and Rs.17,453/- on 1.1.2019. It was also indicated in the said certificate that in addition to the said amount, 12% of basic pay would also be earned every month towards employer's contributory provident fund. Further, as per existing Rules, maximum gratuity admissible on retirement would have been Rs.3.5 lacs and gratuity already paid to the family of the deceased was Rs.47,532/-.

On the basis of the above certificate, the

Tribunal clubbed the income of the deceased on the date of the accident and the income which the deceased would have got at the time of his retirement in the year 2019 i.e. Rs.3295 + Rs.17453 = Rs.20,748/- and dividing the said figure by 2 i.e. Rs.10,374/- per month was taken as the prospective income of the deceased. Deducting one-third amount therefrom as the personal expenses of the deceased, the Tribunal assessed loss of dependency benefit at Rs.6916/- per month i.e. Rs.82,992/- per annum. The Tribunal further adopted multiplier of 16 years on the basis of the Second Schedule to the Act and accordingly computed compensation for loss of dependency benefit at Rs.13,27,872/-. The Tribunal further awarded a sum of Rs.3,02,468/- as the amount of gratuity. The Tribunal made total award of Rs.16,43,340/- as per the following break-up:

Rs.13,27,872/- towards dependency loss
Rs. 10,000/- towards conventional amount.
Rs. 3,000/- towards funeral expenses.
Rs. 3,02,468/- towards gratuity amount.

Rs.16,43,340/-
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The Tribunal then awarded interest at the rate of 12 per cent per annum after referring to certain decisions of the Apex Court. It is against the aforesaid award that the Insurance Company is in appeal before us.

5. Mr.Majmudar, learned counsel for the appellant Insurance Company vehemently submitted as under:-

(i) The Tribunal ought to have assessed the monthly income of the deceased at Rs.3295/- which was the pay on the date of the accident and on that basis, prospective income could have been assessed adding 50 per cent of the said amount i.e. Rs.4942/- per month would have been the maximum prospective income that the Tribunal could have taken into consideration for computing compensation for loss of dependency benefit Deducting one-third amount therefrom, dependency benefit could be assessed at Rs.3295 per month and Rs.39540/- per annum.

(ii) The Tribunal erred in adopting multiplier of 16 and the maximum multiplier that could have been adopted would be only 13.

(iii) The Tribunal erred in awarding compensation under the head of payment of gratuity at Rs.3,02,468/- as ordinarily compensation is not being awarded under such a head.

(iv) After making such an excessive award of Rs.16,43,340/- the Tribunal grossly erred in awarding interest at the rate of 12% per annum and that in such cases, interest could not have been awarded at a rate higher than 7.5% per annum.

6. On the other hand, Mr.Vibhuti Nanavati, learned counsel for respondents Nos.1 to 4 - original claimants - opposed the appeal and supported the award of the Tribunal by submitting that:-

(a) In view of the clear evidence produced before the Tribunal with the certificate of the Competent Officer of the ONGC, certifying that in August 2002 (with perks applicable from 1.1.97), salary and perquisites of the deceased would have been Rs.21,808/- and therefore, even without looking at any further rise in income till the date of superannuation, the Tribunal could have assessed the prospective income of the deceased at Rs.21,000/- rather than Rs.10,874/- assessed by the Tribunal.

(b) As regards multiplier, Mr.Nanavati supported the reasoning and finding of the Tribunal and submitted that even if lower multiplier is adopted, after appropriately assessing prospective income on the basis of the certificate dated 5th February 2003, the award can be still maintained.

(c) If prospective income is assessed on the aforesaid basis, it may not be even necessary to consider the claim for gratuity.

(d) On the question of rate of interest, Mr.Nanavati submitted that there are decisions of the Apex Court where interest is awarded at the rate

of 12% per annum and that in any case, there are several decisions of the Apex Court as well as this Court where interest is awarded at the rate of 9% per annum.

7. Before dealing with the rival submissions, we may refer to the decision of the Apex Court as well as the decisions of this Court taking the view that when the deceased was employed in Government or Public Sector organization or organized industry and pay-scales of the employees of such an organization are revised during pendency of the claim petition or appeal, it is open to the Tribunal/appellate Court to take such pay revisions into account for the purpose of assessing income and for computing compensation for loss of dependency benefit.

7.1 In **New India Assurance Co. Ltd. vs. Kala Devi,** 1996 ACJ 16, the Apex Court approved of the High Court judgment enhancing compensation on the basis of revision of pay-scale of the post held by the deceased by the Third Pay Commission.

7.2 Following the aforesaid decision of the Apex Court, in **Saruyaben Harisingbhai Bilwal vs. Ataullahkhan Mehtabkhan Lalkhan Pathan,** 2001 (3) GLR 2029 where the accident took place in 1988, the Claims Tribunal awarded compensation of Rs.2,47,000/- with interest by award dated 25.3.1988, allowing the appeal filed by the claimants for enhancement of compensation, this Court took into account the

revision of pay-scale of the post held by the deceased by the Fifth Pay Commission with effect from 1.1.1996 by taking judicial notice of such pay revision. The amount of compensation was accordingly enhanced on the basis of the salary in the revised pay-scale.

7.3 Similarly, in **Gujarat State Road Transport Corporation vs. Patel Rajabhai Bavabhai**, 2003 (3) GLR 2258, the accident took place in 1982. The Claims Tribunal passed the award in 1984. In the appeal filed in the year 1985 with cross objections therein, this Court enhanced the compensation amount by taking into account the revisions of pay-scale with effect from 1.1.1986 as well as with effect from 1.1.1996.

8. In view of the above settled legal position, we do not find any difficulty in accepting the submission of Mr.Nanavati for the original-claimants that the Tribunal was justified in looking at the pay revision of employees of the ONGC for the purpose of assessing prospective income of the deceased. The accident in question took place in September 1994. The basic pay of the deceased at that time was Rs.3295 and with dearness allowance and other allowances, his total pay-packet was Rs.6418/-. Even proceeding on the basis that the deductions made by the employer may be taken into account, basic pay, dearness allowance, drill site compensation allowance and house rent allowance granted to the deceased would almost come to Rs.5,000/- per month. Within less than three years from the date of the accident, pay

revision was made by the ONGC with effect from 1.1.97 and in August 2002, basic pay of the employees in the same cadre in which the deceased was working was Rs.10693/- per month with dearness allowance at the rate of 35.5% being Rs.3892/-; drill site compensatory allowance and HRA were also substantially revised and they were 20% and 22.5% of the basic pay in August 2002. These four items aggregated to Rs.19,184/- per month. Over and above these heads, there were also other allowances like, productivity allowance, conveyance allowance, child education allowance, child bus welfare allowance, etc. making it a total figure of Rs.21,808/-. Even after taking into account all deductions including the income tax liability, the net income available to the deceased and his family would have been at least Rs.16000/- from January 1997 onwards.

9. Since the accident took place in 1994 and within three years pay revision was made with effect from 1.1.97 substantially increasing the pay, i.e. when that income would have been available to the family within a short span of three years from the date of the accident, it would not be fair to the claimants to club the two figures - the income on the date of the accident (June 1994) and the income in January 1997 - and then take the mean figure as the prospective income of the deceased. Considering the fact that the deceased was only 35 years old at the time of accident (with 25 years service left) and he would have been 44 years in December 2005, when the

award was made, with another 16 years of service left before retirement and considering his income would have been Rs.16,000/- per month from January 1997, we are of the view that it will be just and proper to assess the prospective income of the deceased at Rs.16,000/- per month for the purpose of computing loss of dependency benefit to the family members comprising of widow, two minor children and widowed mother of the deceased for whom the deceased was the sole bread-winner.

Taking that figure as the income of the deceased and deducting one-third therefrom, loss of dependency benefit would come to Rs.10,600/- per month i.e. Rs.1,27,200/- per annum.

10. While Mr.Nanavati submitted that multiplier of 16 adopted by the Tribunal on the basis of Second Schedule to the Act was not unreasonable, we find substance in the submission of Mr.Majmudar for the appellant Insurance Company that in the facts and circumstances of the case the multiplier of 16 is on the higher side. In **UP State Road Transport Corporation vs. Krishna Bala**, (2006) 6 SCC 249, the deceased was around 36 years of age on the date of the accident. The Tribunal adopted the multiplier of 22. After considering the decisions of the Apex Court in **GM, Kerala SRTC v. Susamma Thomas**, (1994) 2 SCC 176 and **UP SRTCS v. Trilok Chandra**, (1996) 4 SCC 362 and also the discussion on the subject in Halsbury's Laws of England and certain decisions of

the English Courts, the Apex Court held that the multiplier as adopted by the Tribunal and maintained by the High Court was clearly indefensible. Considering the age of the deceased (36 years), the Apex Court adopted the multiplier of 13.

In the facts of the present case, since the deceased was aged 35 years on the date of the accident, it would be reasonable to adopt multiplier of 13 years. Accordingly, adopting multiplier of 13 years, loss of dependency benefit would come to Rs.16,53,600/-. With conventional amounts for loss to the estate, loss of consortium and funeral expenses, the total award would further take the total compensation amount still higher, but the total compensation awarded by the Tribunal is only Rs.16,43,340/- and, therefore, we are of the view that the amount of compensation awarded by the Tribunal in favour of the claimants is not required to be disturbed. This would obviously mean that the claim for compensation for loss of gratuity would not be required to be considered and therefore, we are not required to decide that submission of Mr.Majmudar for the appellant Insurance Company.

11. That takes us to the last submission of learned counsel for the appellant Insurance Company that interest awarded at the rate of 12 per cent annum is very much on the higher side. Learned counsel for the original-claimants has submitted that there are decisions of the Apex Court and of this

Court awarding interest at the rate of 12 per cent and that in any view of the mater, since the claim petition was filed in the year 1994, interest may be awarded at the rate of 9% per annum.

12. While ordinarily we award interest at the rate of 9% per annum, this question is always required to be decided in the facts and circumstances of each case. Section 171 of the Act confers discretion on the Tribunal to award interest at an appropriate rate from a date not prior to the date of the claim petition. In the facts of the present case, we are of the view that the Tribunal did not exercise its discretion on correct legal principles. Since interest is compensation for delayed payment and since we have already taken into consideration the income which the deceased would have received from January 1997 onwards and we have taken that income as prospective income of the deceased without making any reduction therefrom for the prior period, in other words, since the amount of compensation is computed not on the basis of income which the deceased was getting on the date of accident, but when he would have started getting from January 1997 had he been alive, we are of the view that the interests of justice would be served if interest is awarded at the rate of 8% per annum instead of 12% per annum awarded by the Tribunal.

13. Accordingly, the appeal is partly allowed. While confirming the award of the Tribunal awarding

compensation of Rs.16,43,340/- with proportionate costs, we modify that part of the award of the Tribunal awarding interest and we reduce the rate of interest from 12% to 8% per annum from the date of the claim petition till date of deposit of the award amount. The appellant shall deposit the award amount with proportionate costs and with interest at the rate of 8% per annum from the date of the claim petition till realization by 30th December 2006.

14. Considering the facts and circumstances of the case, particularly the facts, as stated by Mr.Nanavati for the original claimants, that the claimants have purchased a house by taking loan and that both the children of the deceased have become major and are pursuing higher education and, therefore, funds are required by the claimants at this stage, we direct that 70% of the amount shall be invested in a number of fixed deposits and balance 30% of the amount shall be disbursed as per the directions given herein.

In view of request being made by Mr.Nanavati that investments may be made at State Bank of India, Ankleshwar, we direct that 70% of the amount to be deposited by the appellant Insurance Company shall be invested in more than one fixed deposits with State Bank of India, Ankleshwar in the name of the claimants as per the apportionment made by the Tribunal. The investments shall be for a period of five years and subject to the usual conditions about prohibition

against premature encashment of/encumbrance over the deposits, permission to the claimants to withdraw interest periodically accruing on the fixed deposits and a direction to the bank not to permit the bank account of the claimants to be operated by any power of attorney holder other than a close relative of the claimants.

The balance amount shall be disbursed to the claimants by account payee cheques after proper verification and after informing them about the amounts being invested and disbursed and the terms and conditions of investment.

15. The amount deposited by the appellant Insurance Company at the time of filing the appeal shall be transmitted to the Tribunal within one month from today.

16. Since the appeal is disposed of, Civil Application for stay does not survive. It is also disposed of accordingly.

(M.S.Shah, J.)

(Akil Kureshi, J.)

(vjn)